



# Town of Southern Shores

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Town of Southern Shores, North Carolina  
Joint Meeting of Town Council and Planning Board  
January 22, 2008  
Pitts Center, Southern Shores Town Hall Complex

## MINUTES

The joint meeting of the Town Council and the Planning Board was held January 22, 2008 in the Pitts Center. Attending the meeting was: Mayor Smith and Council Members McDonald, Hess, Pfizenmayer and Stroud, and Planning Board Chairman Kowalski and Members Poisal, Russell, Peckens, Wendt and Conners. Planning Board Member Walter was absent with excuse. Staff members in attendance were Read, Cowan, Gordin, and Gabrys.

Mayor Smith called the meeting to order at 10:15 A.M. and turned the meeting over to Chairman Kowalski. Chairman Kowalski stated this is the second year a joint meeting has been held between the Council and the Planning Board. The purpose of the meeting is to try and coordinate with each where the two entities are headed, where they have been and what are the current status and concerns. Chairman Kowalski stated there are a number of topics identified and he would like to begin with Part 1 – Council expectations regarding ongoing activities.

Chairman Kowalski stated the major premise is to address why the Council refers items to the Planning Board if they do not feel they are necessary. He stated examples which can be referenced include the vegetation ordinance and the home occupation ordinance. He stated the intent is to identify if there is a way the Planning Board and the Council can interact to understand ongoing activities if Council were to attend Planning Board meetings it would provide a means for the Council to understand what the Planning Board has gone through to address particular topics and to understand there may be other ways to deal with the topics other than outright rejection of an idea. Is there a better way of integrating our two units to prevent committees from running for an extended period of time with no action taken on their recommendations.

Council member Hess stated she began attending Planning Board meetings as often as she could for that very reason. She stated she usually does not speak at the meetings because she does not feel it appropriate to give an opinion prior to it being presented to her. She opined the vegetation topic was sent to the Planning Board because the Council felt there was a connection between Stormwater and Vegetation. At the time, the Council asked what are we trying to fix and if we are trying to fix clear cutting then there may not be a need for the ordinance. She opined when the Council sends a topic to the Planning Board they are not necessarily looking for an ordinance but are looking for an opinion. An example is Community Lighting on the Planning Board's agenda for tonight's meeting. She stated if a topic is investigated by the Planning Board and a report given to Council indicating that there is no problem to be solved then Council is fine with this feedback. The Council may send something to the Planning Board not because they feel it is necessary to have but because it is something that should be explored and we feel the Planning Board is in the best position to explore it.

Mrs. Poisal stated the vegetation advisory board was started in 2001 as a response to a property owner's petition. In 2005 the board presented a plan to the Council which was deemed excessive, the board was disbanded and a new vegetation committee was formed under the Planning Board. She stated she does not recall the direct charge was given to tie into the stormwater review efforts. The committee has appeared with draft ordinances at least three times before the Planning Board finally put before Council with recommendation to hold a public hearing. She opined her understanding is that Council does not want to hold a public hearing. She opined the volunteers have put in six years to try and develop guidelines and they at least deserve a public hearing.

Chairman Kowalski stated there is another topic on the agenda which he would like to blend into the discussion and this is regarding enforcement of ordinances strictly based on complaint driven. He stated Mr. Hejduk indicated he did not have enough manpower to go around and determine what ordinances were being violated. Mr. Hejduk relied on a system of receiving a complaint and Ordinances on the books were not enforced until a complaint came through. Community Lighting is a topic that is addressed by an existing ordinance that states lighting can not be scattered onto the neighbor's property. There is one complaint against an outdoor light on Ninth Ave. and now we are asked to go from the one complaint and look at all the community lighting. He stated if we look at the existing ordinance we will find that all residents of the town are in violation of the ordinance, adding we can pass all the ordinances that we want but if they are not enforced or are enforced on a complaint driven basis the violations will not be addressed and will only multiply.

Mr. Connors opined the vegetation ordinance was killed in committee by Council many years ago due to a lack of political will by the elected officials at that time. He opined Council member McDonald has brought up many good points regarding the language of the ordinance and he looks forward to working with him on changes to the language. He stated what is very frustrating to members of the committee is that after seven (7) years of working on the ordinance there is no will to take it to a public hearing and he felt there is a clear will to kill the entire activity. He stated there is a linkage between the storm drainage and the vegetation. Over the last year and half the committee moved away from the storm drainage because it appeared this was a politically charged subject.

Directing the discussion to the topic of Duck Woods Drive, Chairman Kowalski asked if it is possible for Council to determine if there is a problem that needs to be researched before it is submitted to the Planning Board. Has there been an outpouring of residents on Duck Woods Drive asking for a re-alignment of the road and if there is no problem identified can Council put a stop to the activity.

Mayor Smith responded there isn't a problem with Duck Woods Drive. He stated the reason Duck Woods Drive is mentioned is a result of some homeowners who have expressed problems making a left onto US 158 on the weekends because there is no traffic light at this intersection. He stated there was a conversation that included the suggestion to align Duck Woods Drive with the street in Kitty Hawk and the Department of Transportation (NCDOT) would be willing to install a light. This solution would help the residents on Duck Woods Drive and in Kitty Hawk. He stated there was a discussion of possibly talking to the civic association about relocating the street which would result in the combining of the pieces of land into one larger piece of property. This might provide the possibility of the town using the larger piece of property as a place to temporarily put spoils from the canal dredging project. He opined it makes sense because it helps out the residents on Duck Woods Drive and helps the town with the canal project. He stated there was a brief discussion of the benefit this would be to the entire town if the residents of the street and the civic association agreed to this proposal.

Chairman Kowalski asked if anyone made an attempt to petition the 156 addresses on Duck Woods Drive to determine if they share the same opinion as the complainant(s) regarding Duck Woods Drive. He asked does the town operate on one or two complaints and create a committee or does the town operate on a majority of 51% having the opinion there is a problem.

Mr. Conners stated he brought up the topic because he felt this would be a valid planning issue for the town to consider. He stated there are some very creative people in town and he would hope they feel comfortable bringing their ideas to the Planning Board or to Council.

Chairman Kowalski, using the example of the animal control committee, stated there have been other concerns raised in the past, time spent researching the concerns, ordinances created and passed to address and still with no changes to what is taking place. He asked if there is an alternative to address the areas of concern.

Mayor Smith opined historically this has been a major problem with the town. A meeting is held and issues are identified. Council assigns a committee to address the issue and then an ordinance is passed. Mayor Smith stated if the problem was discussed with the majority of the community it might be determined that there is no issue to be addressed. He stated he agrees we must get away from addressing issues raised by a small minority. Regarding vegetation, Mayor Smith stated he has asked repeatedly where there is a problem and the response has repeatedly been it is clear cutting. He stated there is more growth in this town than there has ever been. Now we are going to tell a home owner if they want to put a shed up they will be required to obtain a drawing from an architect identifying all vegetations on the property and then we will give them a list that identifies what trees can be planted. Regarding clear cutting, he stated if there is a problem that someone clears their lot and does not build within a period of time it can be addressed. We can initiate a change which requires that construction be started within a specific period of time after the lot is cleared and if this is not done then vegetation must be replanted.

Chairman Kowalski stated this solves the problem only if it is enforced.

Council member Stroud stated he has always felt complaint driven enforcement of ordinances is wrong. If an ordinance is on the books it should be enforced. This is not a problem unique to Southern Shores. He opined there are probably a number of ordinances on the books that are not enforced because of the lack of manpower. He stated this relates back to the vegetation ordinance and the amount of time that has passed since work began. He questioned how many lots are sitting in Southern Shores that have been clear cut or are in violation of the ordinance up for approval.

Mr. Cowan stated there are lots undeveloped that are like that, referencing the ocean front and North Dune Loop. He stated there are lots there that have very sparse vegetation where the sand is constantly moving and shifting. He stated when a permit is issued in the office it goes through a lot disturbance process which includes silt or construction fencing as required. He stated during the process of the permit and construction we maintain that they control the sand shifting. He stated we can not control a vacant lot.

Council member Stroud opined he agrees with the example given regarding stripping a lot and letting it sit there. He stated he has a problem putting more burdens on homeowners, especially by telling them what types of trees can be planted, which is what the ordinance does by listing specific trees which will count toward the canopy coverage requirement. He stated it creates a condition which we probably can not enforce because we do not have the manpower to ride around and look for it.

Chairman Kowalski asked if the town, under its current concept of what should be spent and the tax rate to be levied, can do everything for nothing or is it willing to pay more money to do something.

Council member Stroud stated this is a question that can be asked in every town and the answer is there will never be enough money to spend for the enforcement of these ordinances. He stated if he had been involved in the process 7 years ago he would have suggested to not continue the process because he does not feel there is a problem to be addressed.

Mr. Conners opined one of the issues that Chairman Kowalski has raised has merit, i.e. the unfair enforcement of the ordinances. He stated there are some people being cited while others are not and it is because the process is complaint driven.

Council member Stroud stated he disagreed with this. He opined he does not believe complaint driven enforcement is the way to go but at the same time the citizens must understand that one code enforcement officer is not going to see everything that goes on and must rely on the citizens to call in and alert him to the activity. It is then his responsibility to investigate it and enforce the ordinance.

Mr. Conners opined he is in agreement that a complaint driven method does not work. Mr. Peckens stated the prior Town Manager stated in a public meeting that his method for code enforcement was complaint driven and every Council member agreed with him. Mayor Smith stated he advised Mr. Fuller this approach did not make sense and it would allow someone that has an issue with someone else to call and complain. He stated complaint driven is the wrong way to go and everyone in the town needs to be treated the same.

Council member Hess stated her conversation with Mr. Fuller revealed his concerns the town did not have sufficient staff to do proactive enforcement and he could not come up with a better solution. She asked if we need to enforce an ordinance if the situation is not really affecting anyone. The infraction usually takes place after town business hours and we would have to schedule the enforcement officer to visit at that time.

Chairman Kowalski asked how we resolve this. Ordinance violations go un-enforced and the problem compounds because people view the activity as accepted and do it themselves. This is exemplified in the recent topic of community lighting. Should we remove the ordinance from the books because it is accepted activity?

Council member Stroud stated we should be proactive in enforcement to the extent that enforcement can be done. Mr. Cowan stated in the past he has been given complaints to investigate. He stated he has stopped by the location upon receipt of the complaint, revisited three days after the initial complaint and has used his judgment on what he considers to be a violation or not, depending on the situation at the time. He stated he will then revisit the site two weeks later. He stated our regulations are written to require a warning citation and then a citation. By the time we get to the citation cycle the violation is gone and we have to start over from the beginning. He stated if this were changed to allow a citation to be issued once the initial warning citation is issued it would allow us to enforce the ordinances on the books. Council member Stroud stated we need to fix the flaw in the code if this is preventing enforcement.

Mr. Cowan stated the way the ordinance is written on vehicle signage results in every town vehicle being in violation of the ordinance. Council member Stroud stated this is an example of why he has a problem passing ordinances that create circumstances like this. Council member Hess stated it was her understanding the Planning Board was going to pursue parking and signage after the home occupation ordinance was completed.

Chairman Kowalski stated he thinks the Council needs to decide some basic parameters, i.e. what has the town evolved into; what kind of people live in this town; what types of employment are there – resident's going to a business or having their own businesses. We all need to be on the same playing field with the

same concept of the town and this should be communicated to the people in the town so that everyone has the same understanding. We do not want people moving into the town with the idea that it is a residential retirement community if the majority of their neighbors are going to work and need their trucks, equipment, etc to do this. Will the Council then take the steps to modify, change or rearrange what exists in the ordinances to adapt to what is the style of life now versus what existed twenty five years ago?

Council member Hess stated at the time the home occupation was turned over to the Planning Board it was on the basis that this is a residential town and homes were bought on this premise. At that point in time the decision was made to look at the home occupation influence and perhaps allowing a truck to be brought home would be okay, but the storing of inflammable or heavy equipment or employees coming to the house for job assignment would not be appropriate for a residential area. She stated a few years ago the Town Manager would present an Ordinance to the Planning Board without any discussion of the topic occurring before the presentation of the Ordinance. She stated attending the Planning Board meetings and listening to the conversations is very helpful for her. Discussion of a topic is now taking place before it gets to the ordinance level which is a good approach.

Mr. Peckens stated he would like to request that Council members attending a Planning Board meeting share their opinion if they feel the Planning Board is headed in the wrong direction. He stated he would rather spend his time productively doing something that is going to be acceptable to the Council rather than spending hours discussing something that will not be acceptable to the Council and will then be dropped.

Council member Hess stated there appears to be an overriding issue in the community and that is the issue of property rights. People have the right to do with their property what they want, however it does become a town issue when their rights impact the rights of other property owners. Mrs. Poisal stated the State and Federal rules apply as well as the Town rules which impact the rights of the property owners.

Council member McDonald stated there needs to be a procedure in place rather than a knee jerk reaction to making a decision. Referencing the town code, he stated there are already a number of pages addressing lighting in town. An issue identified as a problem may be due to the lack of enforcement which occurs because of a number of reasons but primarily is due to the lack of staff. There are probably ordinances on the books, on a State, County and Local level, that are not enforced because no one is aware of them. It is a complaint driven enforcement by default and we need to come up with a way to draw the line on what creates the need for a judgment to be made. A complaint does not necessarily require that an ordinance be written and there should be some sort of rational used when we start dealing with an issue. We need to have a set of standards to use as a guideline for initiating action. He stated the Council needs to hear citizens concerns and what their desires are. The citizens must participate and provide the feedback or the Council members will not know what they want.

Chairman Kowalski asked if we should also consider asking the question rather than waiting for the calls to be made or emails sent. Should we consider sitting down as a Council / Planning Board joint effort and identify what the bigger question is. We could identify what all the implications are, rather than just having one perspective, and then a determination could be made as to how to address the issue.

Council member McDonald agreed, stating part of the problem is our inability to communicate with all of the citizens at one time. He stated one of the topics discussed at the retreat was how we can transmit information to the citizens better. At the retreat, Mr. Hejduk stated there is a polling program available that is anonymous and password protected to prevent non property owner responses. This may provide a method for obtaining community indicators indicating if the town should pursue a topic. He stated this might require a fair amount of work initially to set up the emails but this would be a way for Council and staff to do a better job communicating to the citizens of the town.

Mr. Read stated this is an issue that he is pursuing and after evaluation he will report back to the Council with his findings.

Mrs. Poisal asked who has the bigger vested interest, the property owner that lives here or the one that does not. The response from the group was they are all taxpayers and that we should at least hear their opinions. This does not mean we need to bend to their will and do exactly what they say. They may bring a different perspective to something that we have not recognized. Council member McDonald agreed identification of a defined process would be beneficial.

Ms. Wendt stated the Wireless Committee is trying to address this differently. A Statement of Work was created to define the purpose of the committee, what they are being charged to research and then a number of statements identifying what they are tasked to do are included. Ms. Wendt stated the entire statement of work is to come back with a report to the Council that identifies the options available and the best practices for these options. The Statement of Work is not intended to return an ordinance.

The Council members agreed this is a better approach to take. Council member McDonald stated he assumed this activity was being done.

Ms. Wendt asked if there could be an agreement that no activity will be taken by a committee unless there is a clear Statement of Work which will be drafted by the Planning Board for the Council. This would distinguish between research activities to have an understanding of the issues versus an ordinance.

Council member McDonald opined this would provide a direction for the committee to follow and it would provide an education tool for the council members and committee members as the participants change.

Chairman Kowalski asked if it is possible to have parameters set up for the Planning Board, or a committee of the Planning Board that should be addressed. This approach could be applied to all future topics and to those that are currently being acted on. If current topics do not meet the parameters defined then a determination can be made to either change the scope and direction of the committee or terminate the activity all together. This would create a definition of the direction to go for each of the committee members and also give the committee members the opportunity to decide if they want to continue their participation under that direction.

Council member McDonald opined this would at least provide a preliminary approach.

Mr. Russell stated the purpose of the committee must be defined by Council. Using the Stormwater Committee as an example, Mr. Russell stated the committee met for three years and turned in a report of the activity done to date. Mr. Russell then received a call asking if he is interested to continue the committee. The committee has spent the last two meetings trying to determine what the Council wants the committee to investigate. The Council requested the Vegetation Committee work with the Stormwater Committee and Mr. Russell asked to accomplish what. The purpose of a committee should be defined. If, after the committee has completed the investigation of the purpose, it is determined that no action will be taken the committee should be dissolved.

Council member McDonald asked if the basic scope concept can be retrofit to the other committees. Ms. Wendt stated she would be willing to spend some time reviewing but felt a discussion should be held at a future meeting.

Mayor Smith asked if the review would incorporate a definition of what the problem is. Ms. Wendt stated it would, adding she will put together a briefing with the intent to describe the average practice and best practice for an area and then open the discussion up between the Planning Board and the Council.

Chairman Kowalski asked if the first area to address would be the Duck Woods Drive concept. Council member McDonald stated this is a Council driven topic and should be addressed by Council with the Civic Association before it goes any further.

Mayor Smith stated enforcement, as directed by the former Town Manager, would only be initiated if a signed complaint was received. Council member McDonald stated the Mayor's interpretation would indicate if a police officer or code enforcement officer drove by a situation that was not legal it would be ignored until a complaint was received. He stated they would not be able to ignore these situations. Mayor Smith agreed with Council member McDonald, stating he was not in agreement with this approach, but that was the approach taken.

Chairman Kowalski stated the Code Enforcement officer would ignore situations and followed the directive to investigate if a complaint was received. He asked unless more staff is added how anything will be enforced. Mr. Cowan stated the police department should be aware of the ordinance violations and should be educated on the ordinances to support the enforcement of them rather than relying on the code enforcement office to do all of the enforcement. He stated this would provide more resources to keep an eye on the violation and to help solve the problems.


Mayor Smith emphasized the police department and code enforcement staff was instructed by the former town manager to ignore a situation unless a formal complaint was filed. Mr. Cowan stated part of the reason for requiring a formal complaint was to have someone as a contact so the investigation results could be reported back to someone. If complaints were received anonymously then there would be no one to share the results with.


Chairman Kowalski summarized the accomplishments of the meeting as follows:

- The town staff will research what can be done to strengthen the code enforcement side, i.e. what needs to be changed regarding the code enforcement process.
- When established, committees will have a charter and a statement of work created to define the responsibilities of the committee.
- The Duck Woods Drive project will be evaluated by the Council to determine what the next steps will be.
- Discuss ways the Planning Board and Council can link together to become involved with each other, especially if there is a major topic developing, to understand the thought process that is taking place.

By consensus the meeting was adjourned at 12:00 p.m.

ATTEST:

  
Don Smith, Mayor

The seal of the Town of Southern Shores, NC, is a circular emblem. It features a central five-pointed star surrounded by a wreath. The words "TOWN OF SOUTHERN SHORES" are inscribed in a circle around the star, and "N. C." is at the bottom. The word "SEAL" is written across the center of the seal.

Respectfully submitted:

  
Carrie Gordin, Town Clerk